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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,640	11/08/2001	Robert McNeil	OHH-P-23	3204

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EXAMINER

OLSZEWSKI, JOAN M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 06/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/008,640

Applicant(s)

MCNEIL, ROBERT

Examiner

Joan M. Olszewski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/08/01 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **NON FINAL- REJECTION**

This is in response to Applicant's amendment filed 2/19/03 and RCE filed 5/19/03. Currently, claims 1-19 are pending in this application.

#### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "external switching means" in claims 7-9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 6 and 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. (U.S. Patent 5,259,809) in view of Holt (U.S. Patent 5,177,891).

Regarding Claims 1,4,10 and 14, Rainey, Jr. discloses a method (Abstract) and apparatus (14) for attracting marine crustaceans (6) to a desired location, as well as teaching that it is well known in the art to use combinations of light, scent, and sound to

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attract animals to traps (column 1, lines 24-25). Rainey, Jr. does not show the use of a sound emitting attractor formed of a watertight container having an exterior surface housing, a power supply and storage means containing a recording of the sound of moving water or a sound transmission means for transmitting the recorded sound from the desired location and the sound transmission means also being located in the container. However, Holt discloses a sound emitting attractor having a watertight container (200) having an external surface (Figure 2), having a power supply (203), storage means (204) capable of containing a recording of background sounds that are known to attract fish (column 6, lines 1-20) such as the sound of underwater disturbances produced by fish swimming or rapidly turning would inherently create and include the sound of moving water or waves, and a speaker (224,225) for transmitting the sound. Further, once it is recognized that sound can be used to attract animals it would be obvious to select a desired background sound based on the likes of the animal trying to be attracted.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Rainey, Jr. by using a sound transmitting device as taught by Holt, as detailed above, since in doing so one is merely replacing one known type of attractant for another which is recognized by Rainey, Jr. in column 1, lines 24-25. Further, the sound of bait is a normal background sound found in the habitat of all animals and as such is considered to constitute background sound. Further, underwater disturbances produced by fish swimming or rapidly turning would inherently create and include the sound of moving water or waves.

Re- Claims 2,5,12,16 and 18, Rainey, Jr. as modified by Holt, discloses all the claimed features including a method (Abstract) and apparatus (14)(Rainey, Jr.) for attracting a marine crustacean. Rainey Jr. does not specify the marine crustacean as a lobster. However, examiner maintains that the class Crustacea includes both lobster and shrimp and therefore to modify a trap to catch one or the other would be dependent only on the location and sound generated.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have recognized that the trap of Rainey, Jr. as modified by Holt, could have been easily used to trap lobsters as well as shrimp.

Re-Claims 3,6,13,17 and 19, Rainey, Jr. as modified by Holt, discloses all the claimed features including a method (Abstract) and apparatus (14)(Rainey, Jr.) being located in a lobster trap since the structure is used to confine Crustacea.

Re- Claims 11 and 15, Rainey, Jr. as modified by Holt, discloses all the claimed features except for the attractant sound being one of water gurgling or splashing through a vent in a lobster containment area. However, Examiner maintains that since it is recognized that different sounds can be used to attract lobsters it would be obvious to use sounds such as "gurgling or splashing" in order to attract a lobster.

### ***Claim Rejections - 35 USC § 103***

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1-6 above, and further in view of Rodgers (U.S. Patent 5,697,182).

Re- Claims 7 and 9, the combination of Rainey, Jr. and Holt as discussed in the rejections above discloses all the claimed features except for the an external switching means comprising electrical contact points that are wired to the power supply to form a partial electrical circuit and wherein submersion in water completes the electrical circuit and activates sound transmission. However, Rodgers teaches the use of an external switch (20), having electrical contact points (11,13) connected to a battery (26) thus forming a partial electrical circuit when placed in water (column 6, lines 23-25).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination of Rainey, Jr. and Holt device by utilizing an external switch with electrical contact points connected to a battery which when placed in water forms a partial electrical circuit as taught by Rodgers in order to provide easy activation of the switch.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1-6 above, and further in view of DuMont (U.S. Patent 5,331,760).

Re- Claims 7 and 8, the combination of Rainey Jr. and Holt as discussed in the rejections above discloses all the claimed features except for a manual external switching means for activating and deactivating an attractant device prior to, during placement, and after removal form the desired location. However, DuMont teaches the use of a manual, externally located switch (24) for controlling a device.

Therefore, it would have been obvious to one of ordinary skill in the art to have modified the combination of Rainey, Jr. and Holt device to include a manual external switch to control the operation of the device in order to provide an easily accessible mechanical means to activate and deactivate the sound system so as to conserve energy when not needed and to prolong the life of the battery.

***Response to Arguments***

Applicant's arguments filed February 19, 2003 have been fully considered but they are not persuasive.

Applicant argues that the sound utilized by the present invention is different than that suggested by Holt. Further, Applicant argues that the Rainey, Jr. reference is only directed to the use of light as an attractant and does not recognize the benefit of utilizing sound. However, as noted by Applicant, Holt recognizes that sound duplication of underwater disturbances produced by fish swimming or rapidly turning can be used as an attractant. Further, it is the Examiner's position that this type of movement by bait fish would inherently be the sound of moving water.

With respect to the combining of the Rainey, Jr. and Holt references this is just the substituting of one known type of attractant for another.

Applicant also argues that neither of the cited patents would be able to directly attract a marine crustacean. However, this type of argument is more specific than the current claim language.

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### Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Loeffelman (4,955,005), Holt (5,883,858) and Thompson (US 2003/0019144 A1).

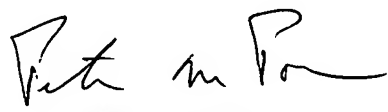
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Joan M. Olszewski  
Examiner  
Art Unit 3643

JMO  
June 4, 2003

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER  
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